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DEPARTMENT OF STATE

[Public Notice 7946]

Bureau of Political-Military Affairs; Statutory Debarment of Pratt & Whitney Canada Corporation under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State, acting pursuant to section 127.7(c) of the International Traffic in Arms Regulations (“ITAR”) (22 CFR Parts 120-130), imposed a statutory debarment on Pratt & Whitney Canada Corporation (“P&W Canada”) as a result of its conviction for violating section 38 of the Arms Export Control Act, as amended, (“AECA”) (22 U.S.C. 2778).

DATES: *Effective Date:* June 28, 2012.

FOR FURTHER INFORMATION CONTACT: Lisa Aguirre, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632-2798.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. The statute permits limited exceptions to be made on a case-by-case basis. In implementing this provision, Section 127.7 of the ITAR provides for “statutory debarment” of any person

who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. Export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements of Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all

circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following person is statutorily debarred: Pratt & Whitney Canada Corporation, 1000 boul. Marie-Victorin Longueuil, Quebec, Canada J4G 1A1 (and all other Pratt & Whitney Canada Corporation locations); U.S. District Court, District of Connecticut; Case No. 3:12CR146(WWE).

As noted above, at the end of the three-year period following the date of this notice, the above named entity remains debarred unless export privileges are reinstated. Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit therefrom or have a direct or indirect interest therein.

Notwithstanding the information above, based on overriding national security and foreign policy concerns and after a thorough review of the circumstances surrounding the

conviction and a finding that the appropriate steps have been taken to mitigate law enforcement concerns, the Assistant Secretary for Political-Military Affairs has determined to approve specific carve-outs from the statutory debarment of P&W Canada for the following categories of authorization requests:

1. Support of U.S. Government programs;
2. Support of coalition Operation Enduring Freedom; and
3. Support of government programs for NATO and Major Non-NATO Ally countries.

All requests for authorizations, or use of exemptions, involving P&W Canada that fall within the scope of the specific carve-outs will be reviewed and action taken by the Directorate of Defense Trade Controls in the ordinary course of business. All requests for authorizations involving P&W Canada that do not fall within the scope of the carve-outs must be accompanied by a specific transaction exception request. Any use of an exemption involving P&W Canada that does not fall within the scope of the carve-outs must be preceded by the approval of a transaction exception request by the Department prior to the use of the exemption. The decision to grant a transaction exception will be made on a case-by-case basis after a full review of all circumstances.

This notice is provided for purposes of making the public aware that the person identified above is prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR that do not fall within the carve-outs to the debarment. Specific criminal case information may be obtained from the

Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

June 26, 2012

Dated

Andrew J. Shapiro
Assistant Secretary, Bureau of
Political-Military Affairs
Department of State

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